

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Abdiyyah ben Alkebulanyahh,)	
)	C.A. No. 6:09-2754-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
South Carolina Department of Corrections;)	
Lieutenant Roger Stewart; and Associate)	
Warden Ralph Hunter)	
)	
<u>Respondent.</u>)	

Plaintiff Abdiyyah ben Alkebulanyahh, proceeding *pro se*, filed the within action pursuant to 42 U.S.C. § 1983 on October 27, 2009 against the South Carolina Department of Corrections (SCDC), Lieutenant Roger Stewart (“Stewart”), and Associate Warden Ralph Hunter (“Hunter”). Plaintiff, a death row inmate, is housed at Liber Correctional Institution. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge William M. Catoe for pretrial handling. On October 28, 2009, Plaintiff was granted leave to proceed *in forma pauperis*. That same day, the Magistrate Judge issued a Report and Recommendation recommending that Plaintiff’s complaint be dismissed only as to SCDC for failure to state a claim upon which relief can be granted. The Magistrate Judge recommended service of the complaint on the remaining defendants. On November 9, 2009, Plaintiff filed objections to the Report and Recommendation.

BACKGROUND

In his complaint, Plaintiff alleges that on October 14, 2009, Stewart sprayed chemical gas or mace into Plaintiff’s face when Plaintiff stated that he did not intend to comb his hair or shave.

Plaintiff contends that a few hours later, Stewart returned to Plaintiff's cell with several other guards, handcuffed him, and forcibly shaved his head and face. Plaintiff states that according to Stewart, these actions were authorized by Hunter.

Plaintiff states that he was then placed in a "strip-out" cell with "nothing but his boxer shorts." Plaintiff states that he was given no linens or mattress, bible or prayer rug. Plaintiff also states that he did not have access to his legal materials and that he needed to file an appeal with the state PCR court and a request for a stay of execution. Plaintiff states that he was confined to this cell from October 14, 2009 until October 20, 2009.

DISCUSSION

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination on any portions of the Report and Recommendation to which a specific objection is made. *Id.* The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

Plaintiff indicates in his objections that he seeks to sue SCDC because both Stewart and Hunter indicated to him that "their actions was [sic] backed up or supported by S.C.D.C. policy. . . ." *See* Entry 18, Plaintiff's objections at 2. Plaintiff also states that he "believes he can be granted relief from South Carolina Department of Corrections because their said policy is unlawful and unconstitutional and it should be lawfully condemned. . . ." *Id.* at 3. Plaintiff states he "believe[s] he is entitled under the law to su[e] the [SCDC]." *Id.* at 4.

The court has conducted a *de novo* review of the complaint and concludes that the Magistrate

Judge has properly applied the applicable law. SCDC is not amenable to suit under § 1983. *See Preval v. Reno*, 57 F. Supp. 2d 307, 310 (E.D. Va. 1999), *vacated in part on other grounds*, 203 F.3d 821 (4th Cir. 2000); *Clark v. Maryland Dep't of Pub. Safety & Corr. Servs.*, No. 08-7918, 2009 WL 646247, *2 (4th Cir. March 13, 2009). The court adopts the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The complaint is dismissed *without prejudice* and without issuance of service of process as to Defendant South Carolina Department of Corrections. Process shall issue for service on the remaining defendants.

IT IS SO ORDERED.

s/ Margaret B. Seymour
The Honorable Margaret B. Seymour
United States District Judge

February 8, 2010
Columbia, South Carolina